

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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WILLIE THURMOND and DAVID THOMAS,
Individually and on behalf of others similarly
situated,

Plaintiffs,

v.

PRESIDENTIAL LIMOUSINE,
PRESIDENTIAL LIMOUSINE, A Nevada
Corporation, PRESIDENTIAL LIMOUSINE
CONCIERGE SERVICE, INC., and BRENT
J. BELL

Defendants.

Case No. 2:15-cv-01066-MMD-PAL

ORDER

I. SUMMARY

Plaintiffs are former or current limousine drivers who worked for Defendants at some point between 2011 and 2016. (Dkt. no. 1-2 at 9.) They assert, among other claims, that Defendants failed to provide them with minimum wages throughout that period in violation of the Nevada Constitution. (*Id.* at 11-14.) Defendants filed both a Motion to Dismiss (“MTD”) (dkt. no. 8) and a Motion for Partial Summary Judgment (“MPSJ”) (dkt. no. 14), seeking dismissal on several grounds. After hearing oral argument on both motions on January 27, 2016, the Court granted the motions in part and denied them in part, reserving one issue in the MTD and the MPSJ for this Order.¹

¹The Court additionally deferred ruling on a statute of limitations issue that the Nevada Supreme Court is currently considering in *Williams v. Eighth Judicial District Court*, No. 66629 (Nev. filed Oct. 6, 2014). The *Williams* matter queries which statute of limitations should apply to a minimum wage claim under the Nevada Constitution, an issue that the parties dispute here. The case was submitted to Nevada Supreme Court for en banc consideration on October 6, 2015, and a ruling on the statute of limitations issue appears to be imminent.

(Dkt. no. 55.) The sole remaining issue is whether the Court should dismiss the portions of Plaintiffs' minimum wage claims that accrued before the Nevada Supreme Court's decision in *Thomas v. Nevada Yellow Cab Corp.*, 327 P.3d 518 (Nev. 2014).² Based on the parties' response briefs (dkt. nos. 15, 23), reply briefs (dkt. nos. 28, 29), and oral argument, the Court finds that dismissal of minimum wage claims predating *Yellow Cab* is not warranted. The MTD (dkt. no. 8) and the MPSJ (dkt. no. 14) are therefore denied with respect to this single remaining issue.

II. BACKGROUND

In 2009, Defendant Presidential Limousine became a party to a different case in this district that involved similar allegations of unpaid minimum wages by former limousine drivers. See *Lucas v. Bell Trans*, No. 2:08-cv-01792-RCJ, 2009 WL 2424557, at *5-8, 10 (D. Nev. June 24, 2009) (adding Presidential Limousine as a party pursuant to the plaintiffs' motion to amend).³ There, the plaintiffs argued that a 2006 amendment to the Nevada Constitution (the "Minimum Wage Amendment") entitled them to minimum wages under Nevada law. *Id.* at *5-8. The defendants countered that limousine drivers were not covered by the Minimum Wage Amendment because they had been categorically excluded from minimum wage benefits under a Nevada statute that predated the Amendment. See *id.* at *5 (discussing NRS § 608.250(2)(e)). The defendants urged the court to read the constitutional amendment — which broadly defines an "employee" as "any person who is employed by an employer," except for individuals who are under 18, employed as short-term trainees, or "employed by a nonprofit organization for after school or summer employment," Nev. Const. art. 15, § 16

²Defendants raised the retroactivity issue in both the MTD and the MPSJ. (See dkt. no. 8 at 9-14; dkt. no. 14 at 10-17.) Because Defendants have presented facts outside the pleadings in support of their MPSJ, the Court will address the MPSJ in lieu of the MTD. See Fed. R. Civ. P. 12(d) (requiring a Rule 12(b)(6) motion to be converted into a summary judgment motion if "matters outside the pleadings are presented to and not excluded by the court"). The reasoning discussed here also applies to the MTD.

³This case was later assigned to a different district judge. Its updated case number is 2:08-cv-01792-JAD. For clarity, the Court will reference the case number that applied when the dismissal order was issued in June 2009.

— as importing the exclusions listed in NRS § 608.250. See Defs.’ Mot. Dismiss at 3, *Lucas v. Bell Trans*, No. 2:08-cv-01792-RCJ (D. Nev. Jan. 20, 2009), Dkt. no. 4; Defs.’ Reply at 6-8, *Lucas*, No. 2:08-cv-01792-RCJ (Feb. 20, 2009), Dkt. no. 7.

The *Lucas* court agreed with the defendants, reasoning that the Minimum Wage Amendment “happily co-exist[s]” with the exclusions listed in NRS § 608.250. *Lucas*, 2009 WL 2424557, at *7. Under that logic, the plaintiffs could not make out a claim for unpaid minimum wages for their work as limousine drivers under Nevada law. The court accordingly dismissed the plaintiffs’ state-law minimum wage allegations. *Id.* at *8. The plaintiffs had alleged several other wage-related claims, including unpaid minimum wages under federal law and unpaid overtime. See Compl. at 11-14, No. 2:08-cv-01792-RCJ (Dec. 18, 2008), Dkt. no. 1. The litigation continued for several years after the Nevada minimum wage claims were dismissed. The parties settled the case in June 2014 with an agreement that covered claims arising between December 2005 and January 1, 2011. Final J., No. 2:08-cv-1792-JAD (June 18, 2014), Dkt. no. 262; Settlement Agreement, No. 2:08-cv-1792-JAD (June 8, 2014), Dkt. no. 260-1.

About a week after the settlement’s approval, in *Thomas v. Nevada Yellow Cab Corp.*, 327 P.3d 518 (Nev. 2014), the Nevada Supreme Court ruled that the Minimum Wage Amendment extends to taxicab and limousine drivers. Defendants assert that they modified their payment practices “[a]lmost immediately” after the decision was rendered. (Dkt. no. 14-1 at 4.) Defendants had already modified their payment practices once before: as of January 1, 2011, Defendants implemented a payment system that, they argue, complied with federal minimum wage requirements. (*Id.* at 3-4.) Defendants began tracking their drivers’ daily tip earnings and supplementing any tips to ensure that the driver earned the federal minimum wage. (*Id.* at 4.) Defendants concede that the 2011 payment modifications did not comply with Nevada’s minimum wage requirements because the system allowed tips to count toward the drivers’ minimum wage threshold. (Dkt. no. 14 at 6-7.)

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1 Plaintiffs initiated this lawsuit in Nevada state court on April 22, 2015. (Dkt. no. 1-
2 2.) Defendants removed to this Court in June 2015; they filed the MPSJ about three
3 weeks later. (Dkt. no. 14.)

4 **III. LEGAL STANDARD**

5 “The purpose of summary judgment is to avoid unnecessary trials when there is
6 no dispute as to the facts before the court.” *Nw. Motorcycle Ass’n v. U.S. Dep’t of Agric.*,
7 18 F.3d 1468, 1471 (9th Cir. 1994). Summary judgment is appropriate when “the movant
8 shows that there is no genuine dispute as to any material fact and the movant is entitled
9 to a judgment as a matter of law.” Fed. R. Civ. P. 56(a); see *Celotex Corp. v. Catrett*,
10 477 U.S. 317, 322 (1986). An issue is “genuine” if there is a sufficient evidentiary basis
11 on which a reasonable fact-finder could find for the nonmoving party and a dispute is
12 “material” if it could affect the outcome of the suit under the governing law. *Anderson v.*
13 *Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). Where reasonable minds could differ on
14 the material facts at issue, however, summary judgment is not appropriate. See *id.* at
15 250–51. “The amount of evidence necessary to raise a genuine issue of material fact is
16 enough ‘to require a jury or judge to resolve the parties’ differing versions of the truth at
17 trial.’” *Aydin Corp. v. Loral Corp.*, 718 F.2d 897, 902 (9th Cir. 1983) (quoting *First Nat’l*
18 *Bank of Ariz. v. Cities Serv. Co.*, 391 U.S. 253, 288–89 (1968)). In evaluating a summary
19 judgment motion, a court views all facts and draws all inferences in the light most
20 favorable to the nonmoving party. *Kaiser Cement Corp. v. Fishbach & Moore, Inc.*, 793
21 F.2d 1100, 1103 (9th Cir. 1986).

22 The moving party bears the burden of showing that there are no genuine issues
23 of material fact. *Zoslaw v. MCA Distrib. Corp.*, 693 F.2d 870, 883 (9th Cir. 1982). “In
24 order to carry its burden of production, the moving party must either produce evidence
25 negating an essential element of the nonmoving party’s claim or defense or show that
26 the nonmoving party does not have enough evidence of an essential element to carry its
27 ultimate burden of persuasion at trial.” *Nissan Fire & Marine Ins. Co. v. Fritz Cos.*, 210
28 F.3d 1099, 1102 (9th Cir. 2000). Once the moving party satisfies Rule 56’s requirements,

1 the burden shifts to the party resisting the motion to “set forth specific facts showing that
2 there is a genuine issue for trial.” *Anderson*, 477 U.S. at 256. The nonmoving party “may
3 not rely on denials in the pleadings but must produce specific evidence, through
4 affidavits or admissible discovery material, to show that the dispute exists,” *Bhan v. NME*
5 *Hosps., Inc.*, 929 F.2d 1404, 1409 (9th Cir. 1991), and “must do more than simply show
6 that there is some metaphysical doubt as to the material facts.” *Orr v. Bank of Am. NT &*
7 *SA*, 285 F.3d 764, 783 (9th Cir. 2002) (quoting *Matsushita Elec. Indus. Co. v. Zenith*
8 *Radio Corp.*, 475 U.S. 574, 586 (1986)). “The mere existence of a scintilla of evidence in
9 support of the plaintiff’s position will be insufficient.” *Anderson*, 477 U.S. at 252.

10 **IV. ANALYSIS**

11 Defendants assert that they were entitled to rely on a favorable ruling in *Lucas*,
12 2009 WL 2424557, at *5-8, which held that limousine drivers were not entitled to a
13 minimum wage under Nevada law. (See dkt. no. 14 at 10-17.) In light of that decision,
14 they argue that it would be unfair to hold them accountable for their failure to pay
15 Nevada minimum wages to their limousine drivers between 2011 and 2014, when the
16 *Yellow Cab* decision was issued. (See *id.* at 11-14.) They ask the Court to use a multi-
17 factor test to determine whether to apply *Yellow Cab* retroactively to that period. (*Id.* at
18 10 (citing *Breithaupt v. USAA Prop. & Cas. Ins. Co.*, 867 P.2d 402, 405 (Nev. 1994) (per
19 curiam)).)

20 By contrast, Plaintiffs argue that the *Breithaupt* test is misplaced. (Dkt. no. 23 at
21 5.) Instead, they contend that the Minimum Wage Amendment was unquestionably
22 effective years before either the *Lucas* or the *Yellow Cab* decision, such that the Court
23 need not determine whether to apply *Yellow Cab* retroactively. (See *id.* at 5-12.) The
24 Court agrees with Plaintiffs.

25 **A. Breithaupt Factors**

26 As an initial matter, it is not clear to the Court that the *Breithaupt* factors must be
27 applied to this case. There, the Nevada Supreme Court refused to apply a statutory
28 amendment retroactively because it would have been inequitable to the insurance

1 companies governed by the statute. 867 P.2d at 405-06. The amendment affected a
2 statute regulating uninsured motorist insurance; the legislature amended the statute in
3 response to a different Nevada Supreme Court decision that had interpreted the pre-
4 amendment statute. *Id.* at 404-05. The plaintiff argued that notice requirements in the
5 amended statute should have applied to her insurance policy, which predated the
6 amendment by several years. See *id.* She also asked the court to overrule the earlier
7 Nevada Supreme Court decision because the amendment suggested that the earlier
8 decision was improperly decided. *Id.* at 405. She urged the court to apply this overruling
9 retroactively. *Id.*

10 Noting that “[t]he overruling of a judicial construction of a statute generally will not
11 be given retroactive effect,” *id.* at 406, the court applied a three-prong test to determine
12 whether to deviate from the general rule. First, “the decision to be applied
13 nonretroactively must establish a new principle of law, either by overruling clear past
14 precedent on which litigants may have relied, or by deciding an issue of first impression
15 whose resolution was not clearly foreshadowed.” *Id.* at 405 (quoting *Chevron Oil v.*
16 *Huson*, 404 U.S. 97, 106-07 (1971), *abrogated by Harper v. Va. Dep’t of Taxation*, 509
17 U.S. 86 (1993)). Second, courts “must weigh the merits and demerits in each case by
18 looking to the prior history of the rule in question, its purpose and effect, and whether
19 retrospective operation will further or retard its operation.” *Id.* (quoting *Chevron Oil*, 404
20 U.S. at 106-07). Finally, courts balance the equities to determine if retroactive application
21 “could produce substantial inequitable results.” *Id.* (quoting *Chevron Oil*, 404 U.S. at 106-
22 07). Applying these factors, the Nevada Supreme Court found that insurers would be
23 unduly harmed by retrospective application of the amended statute because they could
24 not “comply retroactively with a new and more demanding standard of notice.” *Id.* at 406.
25 Nor would retrospective application promote the purpose of the amendment, which was
26 designed to give consumers notice of their rights to purchase certain insurance plans. *Id.*

27 During oral argument in this case, Defendants acknowledged that *Breithaupt* is
28 not directly on point here. First, the *Breithaupt* case involved competing interpretations of

1 an insurance statute by the Nevada Supreme Court and the state legislature, *see id.* at
2 405-06, whereas the *Lucas* decision — a federal district court decision that interprets the
3 Nevada Constitution — was not issued by “the final authority on [Nevada] law.” *Fid.*
4 *Union Tr. Co. v. Field*, 311 U.S. 169, 177 (1940). Although that authority rests with the
5 Nevada Supreme Court, *see id.*, Defendants argue that the *Lucas* court’s dismissal of
6 the Nevada minimum wage claims was a binding judgment on which they were entitled
7 to rely because Presidential Limousine was a party in that case. (See dkt. no. 29 at 7-8.)
8 Even so, they fail to offer authority supporting the position that the later-issued *Yellow*
9 *Cab* decision should not apply to behavior that occurred after the time period at issue in
10 *Lucas*, which covered claims accruing as of January 1, 2011.⁴ Here, Plaintiffs’ minimum
11 wage claims accrued on or after January 2, 2011. (See dkt. no. 1-2 at 9.)

12 A second, and more important, difference between this case and *Breithaupt* is the
13 timing of the change in the law. There, the insurance statute was amended after the
14 plaintiff had purchased the underlying policy, but the Minimum Wage Amendment at
15 issue here was in effect several years before January 2, 2011, when the earliest claims
16 in this case arose. *See Breithaupt*, 867 P.2d at 404-05; *Yellow Cab*, 327 P.3d at 520
17 (explaining that the Minimum Wage Amendment became effective in 2006). And the
18 Nevada Supreme Court has explicitly held that the 2006 Minimum Wage Amendment
19 “supersedes and supplants the taxicab driver exception set out in NRS § 608.250(2).”
20 *Yellow Cab*, 327 P.3d at 522. This holding suggests that Nevada’s minimum wage
21 protections covered taxicab and limousine drivers beginning in 2006. *See Greene v.*
22 *Exec. Coach & Carriage*, 591 F. App’x 550, 550 (9th Cir. 2015) (unpublished
23 memorandum decision) (citing this passage from *Yellow Cab* in rejecting a similar

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26 ⁴To be fair, Defendants indicated that they could not find any case that addressed
27 the scenario presented here — where a party to an earlier federal district court case
28 allegedly relied on that court’s decision to avoid paying minimum wages under state law,
and began paying those wages only after the Nevada Supreme Court reached a
different conclusion on the same legal question.

1 retroactivity argument “[b]ecause the repeal of § 608.250(2) occurred in 2006 when the
2 amendment was ratified”).

3 Defendants nevertheless insist that the three-prong analysis should be applied to
4 this case, focusing primarily on the third prong, which requires the Court to balance the
5 equities of retroactive application. Defendants’ arguments are misplaced.

6 **B. Inequitable Results**

7 Defendants have not demonstrated that retroactively applying *Yellow Cab* “could
8 produce substantial inequitable results.” *Breithaupt*, 867 P.2d at 405. They argue that
9 retroactively applying *Yellow Cab* would be inequitable because Presidential Limousine
10 relied on the *Lucas* decision — which was effectively abrogated by *Yellow Cab* — as a
11 party to that case. (See dkt. no. 14 at 11-14.) As proof of their reliance, Defendants point
12 to a change to their payment system that occurred after the *Lucas* court dismissed the
13 plaintiffs’ Nevada minimum wage claims. (*Id.* at 6.) However, Defendants’ claim of
14 reliance rings hollow because they did not change their payment system after the *Lucas*
15 decision — they did not comply with the Minimum Wage Amendment before the *Lucas*
16 decision was issued and continued the same practice after the decision was rendered.
17 Defendants assert that they began complying with federal — but not Nevada’s —
18 minimum wage laws as of January 1, 2011. (*Id.*) Defendants suggest that their payment
19 practices would have changed to comply with Nevada law had the *Lucas* court not
20 dismissed the Nevada minimum wage claims. (See *id.*) The problem with this argument
21 is that Defendants were unharmed by relying on their favorable outcome in *Lucas* —
22 they were able to continue avoiding their obligation to pay their limousine drivers the
23 Nevada minimum wage. Although Defendants changed their payment practices after
24 *Lucas*, they failed to pay Nevada minimum wages both before and after that decision.
25 Thus, if *Yellow Cab* does not apply retroactively, any inequitable results would affect
26 Defendants’ limousine drivers, who would be foreclosed from seeking minimum wages
27 that they could have accessed after the Minimum Wage Amendment’s 2006
28 implementation.

1 Defendants further assert that retroactively applying *Yellow Cab* would produce
2 inequitable results because Defendants relied on the *Lucas* court's dismissal of the
3 Nevada minimum wage claims in settling that case.⁵ (See *id.* at 6-7, 13.) The settlement
4 agreement covered claims that accrued between December 2005 and January 1, 2011.
5 Settlement Agreement at 5, *Lucas*, No. 2:08-cv-1792-JAD (June 8, 2014), Dkt. no.
6 260-1. The January 1, 2011, end date reflects the date on which Presidential Limousine
7 implemented its modified payment practices to comply with federal minimum wage
8 requirements. (Dkt. no. 14 at 13.) Because the *Lucas* court had extinguished the
9 plaintiff's Nevada minimum wage claims, Defendants believed that they were in
10 compliance with the applicable minimum wage standards as of January 1, 2011. (*Id.*)
11 Thus, Defendants assert that the parties would not have established that end date (as
12 well as the settlement value) but for the *Lucas* court's dismissal of the Nevada minimum
13 wage claims. (See *id.*)

14 This argument is tenuous. First, the only minimum wage claim that could have
15 been settled in the *Lucas* matter was the surviving federal minimum wage claim. It was
16 the *Lucas* court's dismissal order — not the settlement agreement — that disposed of
17 the plaintiffs' Nevada minimum wage claims. See Settlement Agreement, *Lucas*, No.
18 2:08-cv-1792-JAD (June 8, 2014), Dkt. no. 260-1. Second, Defendants have not
19 demonstrated how they relied to their detriment on the *Lucas* dismissal order when they
20 agreed to a settlement value. As noted above, Defendants had already obtained a
21 favorable dismissal order that allowed them to continue to avoid paying Nevada
22 minimum wages to their limousine drivers. Indeed, this argument seems to require an
23 examination of the *Lucas* parties' intent in entering the settlement agreement, which

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25 ⁵This argument could also be construed as a preclusion argument — if the class
26 of plaintiffs involved in the *Lucas* case could have litigated claims arising after January 1,
27 2011 (the close of the period covered by the settlement agreement), then they should be
28 foreclosed from bringing those claims here. (See *id.* at 7.) During oral argument,
the parties presented cursory arguments about the extent to which Plaintiffs in this case
overlap with the *Lucas* plaintiffs, such that preclusion principles might apply here.
Because those arguments were cursory and did not appear in the MTD, MPSJ, or the
related briefing, the Court will not decide any preclusion issues in this Order.

1 seems inappropriate to determine here. Third, in this case, Plaintiffs' unpaid wage claims
2 began, at their earliest, on January 2, 2011. (See dkt. no. 1-2 at 9.) Defendants' reliance
3 argument seems to suggest that the period covered by the *Lucas* settlement should
4 extend into the time period at issue here, which began after the end date in *Lucas*. If the
5 Court refuses to apply the *Yellow Cab* decision retroactively — as Defendants request —
6 then the reach of the *Lucas* settlement would effectively extend to June 2014, when the
7 Nevada Supreme Court issued *Yellow Cab*. See *Yellow Cab*, 327 P.3d at 518. Such a
8 decision would give Defendants a benefit greater than the bargain to which they agreed
9 in the *Lucas* settlement agreement. See Settlement Agreement at 5, *Lucas*, No. 2:08-cv-
10 1792-JAD (June 8, 2014), Dkt. no. 260-1 (defining the time period covered by the
11 settlement). This is hardly an inequitable result for Defendants.

12 Because Defendants have failed to show that *Yellow Cab* should not be applied
13 retroactively, they are not entitled to judgment as a matter of law with regard to Plaintiffs'
14 Nevada minimum wage claims. The Court will therefore deny the MPSJ and the MTD.

15 **V. CONCLUSION**

16 The Court notes that the parties made several arguments and cited to several
17 cases not discussed above. The Court has reviewed these arguments and cases and
18 determines that they do not warrant discussion or reconsideration as they do not affect
19 the outcome of the motions.

20 It is therefore ordered that Defendants' Motion to Dismiss (dkt. no. 8) and
21 Defendants' Motion for Partial Summary Judgment (dkt. no. 14) are denied with regard
22 to the remaining issue of whether to apply *Thomas v. Nevada Yellow Cab Corp.*, 327
23 P.3d 518 (Nev. 2014), retroactively.

24 DATED this 17th day of February 2016

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27 MIRANDA M. DU
28 UNITED STATES DISTRICT JUDGE